

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLEE AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,961

CHARLES C. WILSON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

CHARLES M. IRELAN,
United States Attorney.

JOSEPH M. HOWARD,
Assistant United States Attorney.

*United States Court of Appeals
For the
District of Columbia Circuit*
FILED JUN 11 1952

Joseph W. Stewart
CLERK

No. 10,961

STATEMENT OF QUESTION PRESENTED

Whether a loaded pistol under the back portion of the driver's seat in an automobile, which the driver, after alighting, readily obtains by pushing the driver's seat up and forward, is being carried "about" the person of the driver within the meaning of D.C. Code (1940), § 22-3204.

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v.

UNITED STATES OF AMERICA, APPELLEE

***APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On December 18, 1950, a four-count indictment was filed against appellant in the District Court. The first three counts charged that on October 14, 1950, he had assaulted each of three named individuals with a loaded pistol. The fourth count charged that on the same day appellant "carried a pistol on or about his person without a license having been issued, as provided by law." (J.A. 17.) Motions for judgment of acquittal on all counts were denied and the case was submitted to the jury, which acquitted appellant on the three assault counts, but found him guilty on the pistol-carrying charge (J.A. 17, 19). On February 9, 1951, he was sentenced to imprisonment for a term of one year (J.A. 19). This appeal was noted on February 13, 1951 (R. 20).

In April 1951, before appellant had obtained the tran-

script of the trial proceedings, the reporter died. In June, the trial judge also died. After considerable difficulty a group of reporters succeeded in transcribing the court's charge to the jury from the deceased reporter's notes, and this charge is contained in the record (J.A. 14-16). The attorneys for appellant and appellee reached an agreement as to a narrative of the evidence which had been presented at the trial by the defense, but they could not come to an agreement as to that offered by the Government.¹ The attorney for appellant, therefore, agreed to withdraw the first point in his brief (Br. 5-7), which raised an issue as to the sufficiency of the Government's evidence,² and the attorneys submitted to this Court an agreed statement of the evidence adduced by the defendant.³

The evidence for the defense, as summarized in the Agreed Statement, is as follows:

On October 14, 1950, at or about 11:30 p.m. the appellant and two female companions arrived at premises 615 Second Street, N.E., in the appellant's car. One of the women got out of the car and went into the said premises. The appellant, in the meantime, also got out of his car and seated himself on the right front fender thereof, and was so seated when the woman who had left his car and gone into the house came therefrom in the company of her son, followed by a group of men and women.

When the group reached the point where the appellant was seated, inquiry was made, in terms of profanity, the purpose of his presence, to which appellant made no reply.

¹ Appellant's original Narrative Statement, filed in this Court on March 3, 1952, contained practically none of the evidence for the prosecution. The Government's original Counterstatement, filed in this Court on March 6, 1952, contained a summary of the evidence for the prosecution and a somewhat different version of the defense evidence.

² This point had never been raised prior to the brief, and counsel for appellant had repeatedly stated that the only issue involved in the appeal was the correctness of the charge to the jury on the matter of carrying a dangerous weapon. See, e.g., appellant's Reply to Motion to Settle the Record, filed in this Court April 19, 1952.

³ See Agreed Statement of Case filed in this Court May 8, 1952; and see this Court's order of May 13, 1952.

The appellant said he was then struck by one of the men. He backed away attempting to get into his car, pleading all the while that they not further molest him. However, before he had reached the driver's side of his car, he was struck about the body with a hard object that he identified as an iron pipe or heavy stick, and missiles had also been thrown at him.

Upon reaching the driver's side of the car, he opened the door quickly, pushed the driver's seat up and forward, and from under the back portion of the seat obtained a gun. He then exhibited the weapon and stated openly that he did not desire to hurt anyone, but that he did not want to be hurt either. Moreover, he begged the mob not to come upon him and to back off of him.

That, notwithstanding his plea and admonition, the group nevertheless continued pressing forward, at which time, in an attempt to frighten his antagonists, he fired two shots into the air, each of which took effect, one striking an elderly woman and the other striking a young girl, both of whom were observing the fracas from a second-story window. Upon being further rushed, the appellant, in desperation fired a shot into the ground which apparently ricocheted and struck a member of the mob in the leg. The appellant, who had at that time backed approximately three-fourths of a block, thereupon turned and ran from the mob and took refuge in a neighboring house where he was found by the police upon their arrival.

No weapon was ever recovered from the appellant, and none was offered into evidence.

There was also evidence adduced that during the time the appellant was being set upon, members of the mob group dragged one of the women from the car, beat and struck her and knocked her to the ground.

Those portions of the court's instruction to the jury, which pertain to the charge of carrying a dangerous weapon, are as follows (J.A. 14, 15, 16):

The fourth charge is that he carried a pistol on that day about his person without a license having been issued as provided by law.

* * * * *

Now, as regards the fourth count, the law of the District is this—and the fourth count should be considered without the slightest relation to the other three counts—the law, in so far as this case is concerned, is this: that no person shall within the District of Columbia carry either openly or concealed or on or about his person, except in his dwelling-house or place of business or on other land possessed by him, a pistol, without a license therefor issued, as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed.

Now, if you believe beyond a reasonable doubt, as defined by the Court to you, that Wilson had in his hand on the night in question a deadly weapon, to-wit, a loaded pistol, then he is guilty under the fourth count.

As I stated before, you have to believe it beyond a reasonable doubt. It makes no difference, in so far as that particular charge is concerned, whether at that time he was in danger of death or grievous bodily harm or not. Of course, if he was in danger of death or grievous bodily harm, and violated the law and was found guilty in court, and that was the fact, the Court would take the fact that he was in danger of bodily harm into consideration, but that has nothing to do with this law. If you find beyond a reasonable doubt that he had in his hand a loaded pistol, for which he did not have a license, then he is guilty under the fourth count.

* * * * *

Mr. MITCHELL: I take the position, if Your Honor please, that the nature of the charge is such as to compel the jury to return a verdict of guilty.

The COURT: Well, I think not.

Mr. MITCHELL: I don't think I could consent, if Your Honor please, that the statute does state that. For that reason, I want to take an exception.

The COURT: Of course, the only thing the Court could do—the Court didn't tell the jury—of course, if you want it—The Court said, if the jury found from the evidence beyond a reasonable doubt, as defined by the Court, that he had in his hand a loaded pistol, they should find him guilty, or words to that effect.

Mr. MITCHELL: Yes, Your Honor.

The COURT: Do you see any objection to that charge?

Mr. SOMMER: No, Your Honor.

The COURT: I don't see any objection. You have an exception.

Mr. MITCHELL: All right.

STATUTE INVOLVED

D. C. Code (1940), § 22-3204 provides as follows:

Carrying Concealed Weapons.—No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed: *Provided*, That arrests, without a warrant, and searches and seizures pursuant thereto, may be made for violation of this section, by police officers, as in the case of a felony, upon probable cause that the person arrested is violating this section at the time of the arrest; but no evidence discovered in the course of any arrest, search, or seizure authorized by this provision shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was carrying a pistol or other dangerous weapon on or about his person (As amended Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469.)

D. C. Code (1940), § 22-3205 provides as follows:

Exceptions to section 22-3204.—The provisions of section 22-3204 shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law-enforcement officers, or to members of the Army, Navy, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of

such business or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving goods from one place of abode or business to another. (July 8, 1932, 47 Stat. 651, ch. 465, § 5.)

SUMMARY OF ARGUMENT

Appellant's own testimony showed that he had a loaded pistol under the driver's seat of his automobile at the time he drove it up, parked, and got out into the street. It showed also that, after he had been subsequently threatened and pursued by a "mob", he readily obtained the pistol by pushing the driver's seat up and forward. Whether a pistol under the driver's seat is carried "about" the driver's person is a question to which many conflicting answers have been given in the state courts. This Court in *Brown v. United States*, 58 App. D.C. 311, decided in 1929, indicated approval of these decisions which construe the statute liberally in favor of protection of the public, and the legislative history of the comprehensive Firearms Act, subsequently enacted in 1932, shows a Congressional purpose to strengthen the existing law on the subject. It seems clear that Congress intended to prohibit the carrying of a pistol in such close proximity to the person. If this is true, appellant had already violated the law long before he was threatened. His plea of self-defense was, therefore, irrelevant so far as the pistol-carrying charge was concerned. Since the court might, under the admitted facts, have told the jury to convict appellant if they found he had a loaded pistol under the driver's seat of his car, the instruction actually given was not prejudicial.

ARGUMENT

The Trial Court's Instruction to the Jury on the Pistol-Carrying Charge Was, in the Light of Appellant's Own Testimony, Not Improper

The evidence for the prosecution is not, for reasons already explained (*supra*, p. 1-2), contained in the record before this Court. But, according to appellant's own testi-

mony, he had a pistol—obviously loaded—under the driver's seat of his car when he drove it up and parked it in front of 615 Second Street, N.E. (supra, p. 2-3). The court instructed the jury that, even if appellant was in danger of death or grievous bodily harm, they should find him guilty if they found beyond a reasonable doubt that he had a loaded pistol in his hand, without a license therefor (supra, p. 4). Appellant objected to this instruction (supra, p. 4), and he now argues that the jury should have been instructed to find him not guilty if they found that his possession of the loaded pistol was only momentary, and resulted from threats of great bodily harm (Br. 3, 4, 7-12).

We submit that the trial judge was correct in instructing the jury to disregard the issue of self-defense in their consideration of the pistol-carrying charge. He had already told them, in discussing the three shooting charges, that appellant would be justified if he fired the shots to protect himself from death or grave bodily injury⁴ (J.A. 14-15), and on these three counts the jury refused to convict (J.A. 17). If there were evidence in this case to support appellant's contention that he had never had possession of the pistol until he drew it from beneath the driver's seat, and that this possession was momentary and occasioned by threats, we would agree that appellant would have been entitled to the instruction which he desired. Obviously, if that were the case, he would have been guilty of no prior illegality and his act in taking up the loaded pistol would have been the result of duress. Similarly, the defendant in appellant's supposititious case (Br. 9), who, being set upon in his home, retreats with his pistol into the street, is guilty of no prior illegality (for the statute permits possession of a pistol in the home) and is acting under duress.

But the point here is that appellant's own testimony shows that when he drove up to the house in his automobile,

⁴ In addition to this instruction the court read to the jury three specific instructions on the issue of self-defense in the language requested by defense counsel (J.A. 15-16, 18). All three requested instructions were tied to the shooting charges. No written instructions were submitted as to the pistol-carrying charge.

long before any threats were made against him, he had under the driver's seat a loaded pistol. In our view he was, therefore, already violating the law by carrying a pistol about his person without a license. What happened thereafter is irrelevant so far as the pistol-carrying charge is concerned. Certainly he could not claim to be absolved from the already completed offense of *carrying* a pistol because of the accidental circumstance that it became necessary for him to *use* it in resisting an attack, no matter how clear and strong the evidence to show that he acted in self-defense. The real question is, then, whether a loaded pistol "under the back portion of the [driver's] seat"⁵ is "on or about the person" of the driver within the meaning of the local statutory provision, D.C. Code (1940) § 22-3204. If the answer to that question be, as we submit it should be, in the affirmative, then the trial court's instruction was certainly not harmful to appellant, and may even have been more favorable than he deserved.

The question of what constitutes carrying a pistol "about," as opposed to "on," the person, particularly with reference to persons travelling in vehicles, has evoked a welter of conflicting decisions. The state cases are irreconcilable, and the body of authority erected in the state courts gives the impression of a small tower of Babel. There are cases which say that a pistol under the driver's seat is "about" his person, and cases which say that it is not. There are cases which say that a pistol in the glove compartment on the *right* side in front seat is "about" the driver's person, and cases which say that a pistol in the glove compartment on the *left* side is *not* "about" the driver's person. See the Note at 50 A.L.R. 1534, supple-

⁵ The only evidence in the record as to the location of the gun is as follows: "Upon reaching the driver's side of the car, he opened the door quickly, pushed the driver's seat up and forward, and from under the back portion of the seat obtained a gun" (*supra*, p. 3). The statement in the brief that appellant's car was an "ancient model two-door sedan" (Br. 9) is not to be found in the record, and the further assertions that the pistol was not within "reach" of appellant and was not "convenient" to him (Br. 9) are, of course, mere legal conclusions.

mented at 88 A.L.R. 807; cf. also the Note at 73 A.L.R. 839. The confusion among the state cases has been so ably pictured in the article on Weapons in 56 American Jurisprudence 997 that we reproduce the passage here:⁶

It has been held that a pistol placed behind or under the cushion of the seat of a vehicle or on the running board thereof was carried in violation of the statutes of the statutes involved.¹¹ A revolver or pistol may be considered to have been carried on or about the person where it was carried under or on the seat, on the floor, or in some other accessible part of the vehicle in which the defendant was riding or which he was driving.¹² Even the presence of a pistol in a pocket on the door on the right-hand side of a parked car has been regarded as justifying a conviction of the driver for carrying the weapon on or about his person, where the driver was sitting on the left side of the car with another person sitting at his right.¹³ A statute declaring it unlawful to carry publicly or privately a pistol

⁶ The footnotes are given as in the original:

¹¹ Anno: 50 ALR 1536-1538.

¹² Anno: 50 ALR 1537, 1538.

One having a revolver in a holster on the small shelf back of the seat of an automobile was regarded as carrying the weapon in violation of a statute forbidding any person to "go armed" with any concealed weapon. Anno: 88 ALR 808.

¹³ Anno: 88 ALR 808.

For discussion of firearms as baggage, see 10 Am. Jur. 437, CARRIERS, § 1712.

¹⁴ *Kendall v. State*, 118 Tenn. 156, 101 SW 189, 121 Am. St. Rep. 994, 11 Ann. Cas. 1104.

¹⁵ Anno: 50 ALR 1538.

¹⁶ *Sutherland v. Com.*, 109 Va. 834, 65 SE 15, 23 LRA(NS) 172, 132 Am. St. Rep. 949. Anno: 50 ALR 1538. Carrying in the hand a pair of saddle-bags which contain a pistol incased in a scabbard is not within the statute prohibiting anyone from carrying a pistol about his person, hid from common observation, the court observing that "about the person" must mean that it is so connected with the person as to be readily accessible for use or surprise if desired. *Sutherland v. Com.*, 109 Va. 834, 65 SE 15, 23 LRA(NS) 172, 132 Am. St. Rep. 949.

¹⁷ Anno: 50 ALR 1538.

¹⁸ *State v. Brunson*, 162 La. 902, 111 So. 321, 50 ALR 1531.

¹⁹ Anno: 50 ALR 1538.

²⁰ *Com. v. Nunnelley*, 247 Ky. 109, 56 SW 2d 689, 88 ALR 805.

concealed upon the person is violated where a pistol is carried in a box under the driver's seat of a hack.¹⁴ On the other hand, it has been held that a pistol was not carried on or about the person within the terms of the statute where it was carried in a suitcase,¹⁵ in saddlebags,¹⁶ under the seat of a vehicle or under a rug on the floor thereof,¹⁷ in a pocket attached to the front door of an automobile beside the driver,¹⁸ or in the pocket of an overcoat which was not worn but was carried in a wagon.¹⁹ Where a pistol was carried by the defendant under the front seat of his automobile and was not accessible without raising the seat, it has been held that he could not be convicted of carrying concealed a deadly weapon on or about his person.²⁰ [See page 9 for footnotes 14-20.]

We submit that this Court has already indicated its disapproval of the line of state authorities upon which appellant relies. In *Brown v. United States*, 58 App. D.C. 311, 30 F. 2d 474, there was evidence on behalf of the defendant that the pistol was not on his person, but "in a scabbard * * * under the seat" of the car in which he was riding. The jury, after deliberating for a while, returned and asked, "Would it be a violation of the law if the defendant had a pistol concealed in the automobile, though not on his person, but within his reach?" The trial court answered the question in the affirmative and this Court sustained the ruling as a correct statement of the law. It is true that the specific holding was that "about the person" means "in such proximity to the person as to be convenient of access and within reach." 58 App. D.C. at 312. But the Court also pointed out that the purpose of the statute was "the protection of the public from the menace of concealed 'deadly or dangerous' weapons," that the "word 'about' is a comprehensive term, and we must assume that Congress intended that it should be accorded such an interpretation," and that the statute "should receive such reasonable construction as would effectuate its purpose." 58 App. D.C. at 312. Had this Court been inclined to follow the narrow interpretation of these state authorities upon which appellant now relies, instead of taking the liberal line it did, it would have ruled in the *Brown* case that the jury should

have been instructed that, as a matter of law, a gun under the rider's seat is not "about" the person of the rider. We respectfully submit that it seems a little ridiculous to say that a loaded pistol under the driver's seat is not "about" the person of the driver for the sole reason that it is not within easy reach while he is operating the car, when all he has to do is stop the car and stand beside the driver's seat to make the weapon readily accessible. That is exactly what happened here. When appellant drove up in front of the house and stepped out of the car the loaded pistol was "convenient of access and within reach", for by his own evidence he later readily obtained it in time to defend himself although being set upon by a "mob" with sticks and stones (*supra*, p 3).⁷

Furthermore, the *Brown* case was decided in 1929, under a statute (D.C. Code (1929), §§ 6-114-116) which was almost primitive in comparison with the comprehensive and stringent series of statutes (D.C. Code (1940), §§ 22-3201-3216) which Congress subsequently enacted in 1932 in an effort to control the sale, possession and carrying of pistols in the District of Columbia. Under the 1932 Act⁸ Congress

⁷ Other cases decided under the statute have no pertinence to the present issue. In *Bell v. United States*, 49 App. D.C. 367, 265 Fed. 1007, and in *Bolt v. United States*, 55 App. D.C. 120, 2 F. 2d 922, the questions raised involved statutory exceptions. In *Waters v. United States*, 73 F. Supp. 72, 175 F. 2d 340, 335 U.S. 869, the uncontradicted evidence showed that the pistol was within easy reach of the driver of a taxi. In *Brown v. United States*, 66 A. 2d 491 (D.C. Mun. App.), the question was whether the Government was required to prove that the defendant had no license.

⁸ As originally introduced the 1932 Act appears to have been exactly the same as the uniform Firearms Act recommended by the National Conference of Commissioners on Uniform State Laws. 75 Cong. Rec. 7979-7980. And, as will readily be seen by a comparison of the two, the Act as ultimately adopted contained no very extensive revisions. 75 Cong. Rec. 12754-12755.

The Uniform Firearms Act was originally recommended by the National Conference in 1930. See *Handbook of the National Conference of Commissioners on Uniform State Laws* (1930), pp. 530-574, containing numerous case annotations. This act was adopted in Alabama, Indiana, Pennsylvania, South Dakota, and Washington, in addition to the District of Columbia. 9 *Uniform State Laws Annotated*, p. XIX. The original act was superseded by the Uniform Pistol Act in 1940 (see *Handbook*, 1940, pp. 331-359),

specifically approved the ruling of the *Brown* case by forbidding the carrying of a pistol "on or about" the person, instead of simply "about" the person as had been provided under the old law. Cf. D.C. Code (1940), § 22-3204, with D.C. Code (1929), § 6-114. The concern of Congress over the situation is shown by the strict regulation imposed upon all dealers and upon all transfers of pistols (D.C. Code (1940), §§ 22-3207-3211), by the provision for the issuance of a license to carry a pistol under certain exceptional circumstances (D.C. Code (1940), § 22-3206), and by the care with which Congress enumerated the classes of persons to be exempted from the operation of the Act (D.C. Code (1940), § 22-3205). The legislative history shows that one of the purposes of the act was, "prohibiting possession of weapons for which there is no legitimate use",⁹ and the need for the legislation was pointed up by a report from the Metropolitan Police Department giving figures to show the numerous crimes of violence in which firearms were employed.¹⁰ There are no wide open spaces in the District of Columbia, such as there are in the states.¹¹

which was eventually withdrawn by the Commissioners in 1949 (see *Handbook*, 1949, p. 428) after it had been adopted in New Hampshire and North Dakota.

⁹ See Sen. Rep. No. 575, 72nd Cong., 1st Sess., April 19, 1932. For other legislative history see Hearings before Committee on the District of Columbia on Sen. 2751, 72nd Cong., 1st Sess., Feb. 26, 1932; H. Rep. No. 767, 72nd Cong., 1st Sess., March 11, 1932; 75 Cong. Rec. 7979-7983, 8458, 11717, 12754-12755, 14605.

¹⁰ See Sen. Rep. No. 575, *supra*.

¹¹ That Congress was well aware of the need for greater strictness of regulation in the District appears from the following picturesque bit of by-play during the debate in the House (75 Cong. Rec. 7982):

Mr. Blanton. They are short-barreled guns; and without an explanation of it somebody might say that they were sawed-off shotguns; and then, too, there are guns that they cut the ends of the barrels off, used by farmer boys everywhere. Such guns scatter the shot more, and that is the reason they saw them off. In your effort to reach the thugs you are liable to reach innocent and honest boys who hunt in Maryland, Virginia, Pennsylvania and elsewhere in the United States.

Mr. Stafford. Let me say to the gentleman from Texas that this law is limited in its application to the District of Columbia. *We have no such farmer boys located here who*

Throughout its entire geographical area it is thickly built and populated, and will obviously be even more so in the years to come. Since Congress has so carefully regulated the carrying of pistols, and since it has so carefully considered and defined the numerous classes of persons who are entitled to exemptions from the operation of the act, we see no excuse for carrying a pistol in such close proximity to the person as was done in this case. We respectfully submit that the Court should hold that, as a matter of law, a loaded pistol under the driver's seat is "about" the person of the driver.

The trial judge instructed the jury that they should find appellant guilty if they found that he had a loaded pistol in his hand, and appellant now argues that this was tantamount to directing a verdict of guilty. But under the evidence presented by appellant himself the court would have been justified, as we have just explained, in telling the jury that they could convict him if they found that he had the pistol under the driver's seat. Consequently, we fail to see that the instructions was prejudicial to appellant. When the facts are not in dispute the trial court may, of course, lay down to the jury the law applicable to them. *Horning v. United States*, 254 U.S. 135, 138; and cf. *Billeci and Lewis v. United States*, 87 U.S. App. D.C. 274, 184 F. 2d 394.

CONCLUSION

It is respectfully submitted that the judgment of conviction should be affirmed.

CHARLES M. IRELAN,
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JOSEPH M. HOWARD,
Assistant United States Attorney.

would use this character of implement. Otherwise I would accept the criticism of the gentleman from Texas as a proper one, but *this law does not extend to a farming community.* (Emphasis supplied.)

JOINT APPENDIX

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JOINT APPENDIX

1-2

CHARGE TO THE JURY

The COURT (Goldsborough, J.): Ladies and Gentlemen: First, I want to say to you—call your attention to the fact—that while Mr. Mitchell was arguing the case yesterday, the Court called his attention to the doctrine of “back to the wall.” That was the * * * the language may be used, although we say “back to the wall.” Now, the Court has reached the conclusion that in order for you to understand what that doctrine meant when it was announced and what is referred to now is not of help to you in this case. The doctrine, used after the introduction of firearms, as a specific doctrine, has gradually evaporated. The Court made mention of it yesterday because the Court thought that Mr. Mitchell was going rather far, but the Court thinks it is a mistake that the Court mentioned it, because it might be misunderstood by the jury. So the Court instructs you to disregard the episode entirely.

Now, in this case the defendant is indicted in four counts, which means four charges, of course.

The first charge is that on October 14, 1950, the defendant shot Charles G. Wilson with a loaded pistol.

The second charge is that the same day he shot a loaded pistol at Barbara A. Cox—

Mr. MITCHELL: I think Your Honor made a mistake. You said he shot Charles G. Wilson.

3 The COURT: Robert Morris. The first charge is that he shot Robert Morris.

The Second charge is that the same day he shot Barbara A. Cox.

The third charge is that the same day he shot Lydia Cox.

The fourth charge is that he carried a pistol on that day about his person without a license having been issued as provided by law.

Now, I will take the charges up in that order. For an individual to shoot a deadly weapon, such as a loaded pistol, in his defense is not justified as a matter of public policy, unless he is in danger of death or grievous bodily harm. Now, if you believe from the evidence that Wilson was in danger of death or grievous bodily harm at the time he shot Morris, or if you believe that the Government has not shown beyond a reasonable doubt that he was not in danger of his life or grievous bodily harm, why, you should find him not guilty.

A reasonable doubt is a doubt which a reasonable man

would have after a careful investigation and consideration of all the evidence; a doubt which would cause a reasonable man to hesitate and pause.

Now, in the case of Barbara A. Cox and Lydia Cox, if you believe beyond a reasonable doubt, as defined to you by the Court, that those two women were shot while there was a struggle going on over the pistol, at a time
4 when Wilson had reasonable ground to believe that he was in danger of death or grievous bodily harm, you should find him not guilty; otherwise, you should find him guilty.

Now, as regards the fourth count, the law of the District is this—and the fourth count should be considered without the slightest relation to the other three counts—the law, in so far as this case is concerned, is this: that no person shall within the District of Columbia carry either openly or concealed or on or about his person, except in his dwelling-house or place of business or on other land possessed by him, a pistol, without a license therefor issued, as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed.

Now, if you believe beyond a reasonable doubt, as defined by the Court to you, that Wilson had in his hand on the night in question a deadly weapon, to-wit, a loaded pistol, then he is guilty under the fourth count.

As I stated before, you have to believe it beyond a reasonable doubt. It makes no difference, in so far as that particular charge is concerned, whether at that time he was in danger of death or grievous bodily harm or not. Of course, if he was in danger of death or grievous bodily harm, and violated the law and was found guilty in court, and that was the fact, the Court would take the fact that he was in danger of bodily harm into consideration, but
5 that has nothing to do with this law. If you find beyond a reasonable doubt that he had in his hand a loaded pistol, for which he did not have a license, then he is guilty under the fourth count.

Now, there are certain instructions that were suggested by the defendant, and which state the law of this case, which the Court granted, and which I now read to you:

Even though the last shot (or shots) were intentional and may seem to have been unnecessary when considered in cold blood, defendant does not necessarily lose his immunity if it followed close upon the others while the heat of conflict was on, and if the defendant had reasonable ground to believe that he was battling for his life.

Where a person is justified in firing the first shot, he is justified in continuing to shoot until the danger to his life or body has ceased.

Therefore, the right of a defendant when in imminent danger to defendant himself does not depend upon whether there was an opportunity to escape. One under such circumstances is not compelled to step aside or flee. The question is whether, from the character of the antagonist and his action at the time, the defendant could reasonably infer or believe that he was in danger of his life or serious bodily harm.

Will counsel come to the bench?

(At the bench:)

6 Have counsel, either for the Government or for the defense, any suggestions they would like to make, or any exceptions they would like to take?

Mr. MITCHELL: Yes, Your Honor. I feel, if Your Honor please, that as expressed * * *.

The COURT: I didn't tell them that.

Mr. MITCHELL: I take the position, if Your Honor please, that the nature of the charge is such as to compel the jury to return a verdict of guilty.

The COURT: Well, I think not.

Mr. MITCHELL: I don't think I could consent, if Your Honor please, that the statute does state that. For that reason, I want to take an exception.

The COURT: Of course, the only thing the Court could do—the Court didn't tell the jury—of course, if you want it—The Court said, if the jury found from the evidence beyond a reasonable doubt, as defined by the Court, that he had in his hand a loaded pistol, they should find him guilty, or words to that effect.

Mr. MITCHELL: Yes, Your Honor.

The COURT: Do you see any objection to that charge?

Mr. SOMMER: No, Your Honor.

The COURT: I don't see any objection. You have an exception.

Mr. MITCHELL: All right.

7-8 (At 11:35 a. m. the jury retired to consider of its verdict.)

(At 2 p. m. the jury returned its verdict, as follows:)

The DEPUTY CLERK: Mr. Foreman, has the jury agreed upon a verdict?

The FOREMAN OF THE JURY: We have.

The DEPUTY CLERK: What say you as to the defendant, Charles C. Wilson, as to Count 1?

The FOREMAN OF THE JURY: Not guilty.

The DEPUTY CLERK: Count 2?

The FOREMAN OF THE JURY: Not guilty.

The DEPUTY CLERK: Count 3?

The FOREMAN OF THE JURY: Not guilty.

The DEPUTY CLERK: Count 4?

The FOREMAN: Guilty.

The COURT: Members of the jury: Your foreman says you find the defendant, Charles C. Wilson, not guilty of counts 1, 2, and 3 of the indictment, and guilty on count 4; and that is your verdict, so say you each and all?

The JURY: It is.

The COURT: The jury is excused until Monday morning at 9:45.

9-11 Filed in Open Court Dec. 18, 1950, Harry M. Hull, Clerk.

The Grand Jury charges:

On or about October 14, 1950, within the District of Columbia, Charles C. Wilson made an assault on Robert Morris with a dangerous weapon, that is, a loaded pistol.

Second Count:

On or about October 14, 1950, within the District of Columbia, and on the same occasion as that referred to in the first count of this indictment, Charles C. Wilson made an assault on Barbara A. Cox with a dangerous weapon, that is, a loaded pistol.

Third Count:

On or about October 14, 1950, within the District of Columbia, and on the same occasions referred to in the first and second counts of this indictment, Charles C. Wilson made an assault on Lydia Cox with a dangerous weapon, that is, a loaded pistol.

Fourth Count:

On or about October 14, 1950, within the District of Columbia, Charles C. Wilson carried a pistol on and about his person without a license having been issued as provided by law.

12 Filed Jan. 26, 1951. Harry M. Hull, Clerk.

DEFENDANT'S PRAYER No. 1

Even though the last shot (or shots) were intentional and may seem to have been unnecessary when considered in cold blood, defendant does not necessarily lose his immunity if it followed close upon the others while the heat of conflict was on, and if defendant had reasonable ground for violence that he was fighting for his life.

Brown vs. U.S. 256 — U.S. — 335 — at page 344. Of opinion — Language of Jus. Holmes. Also 40 — CJS — Para 131 — page 1020.

Granted as amended.

13 Filed Jan. 26, 1951. Harry M. Hull, Clerk.

DEFENDANT'S PRAYER No. 2

Where a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life or body has ceased.

256 — U.S., 335 Brown v. U.S. Opinion of Court pg. 344 — Also 40 CJS Title — Homicide — page 1020.

Granted.

14-18 Filed Jan. 26, 1951. Harry M. Hull, Clerk

DEFENDANT'S PRAYER No. 3

The right of a defendant when in imminent danger to defend himself does not depend upon whether there was an opportunity to escape. One under such circumstances is not compelled to step aside or flee. The question is whether, from the character of the antagonist and his action at the time, the defendant could reasonably infer or believe that he was in danger of his life or of a serious bodily harm.

Marshall vs. U. S. — 45 App. D.C. 373-384.

Granted.

19-27 Filed Feb. 12, 1951. Harry M. Hull, Clerk.

On this 9th day of February, 1951 came the attorney for the government and the defendant appeared in person and¹ by counsel, Curtis P. Mitchell, Esquire.

It is adjudged that the defendant has been convicted upon his plea of² not guilty and a verdict of guilty of the offense of Carrying a Deadly Weapon as charged³ in Count Four and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of⁴ One (1) year.